

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.R., a Person Coming Under the
Juvenile Court Law.

B236908
(Los Angeles County
Super. Ct. No. CK89044)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Tim Saito, Judge. Affirmed.

Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor, John M. Kennedy, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

A.R. (father) appeals from the juvenile court's jurisdiction and disposition orders finding his minor son, S.R., born in 2010, a dependent child of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b)¹ regarding mother's use and sale of illicit drugs. Father contends that the juvenile court erred because he was able to make an appropriate plan for S.R.'s care despite being incarcerated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2011, the Los Angeles County Department of Children and Family Services (Department) filed a detention report stating that S.R.'s family consisted of L.C. (mother), and S.R.'s siblings, T.R., D.R., and M.R.² The family came to the Department's attention by a referral alleging that the children were victims of general neglect and caretaker absence by mother.

The detention report stated that the referral alleged that mother had been selling marijuana and cocaine outside of her home, and she and her friends smoked marijuana inside the home. The Department conducted an investigation during which mother denied that she smoked marijuana. Mother stated that the whereabouts of father were unknown. Thereafter, mother underwent a drug test and tested positive for methamphetamine and amphetamine use.

The Department's July 25, 2011, detention report stated that on July 1, 2011, mother admitted to the Department she used and sold methamphetamine, and she was selling drugs out of her home. Although mother said she was willing to enroll in an inpatient substance abuse program for six months, the Department was unsuccessful in contacting mother to arrange her enrollment in the program.

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² S.R.'s siblings have a different father than S.R., and are not parties to this appeal.

On July 25, 2011, the Department filed a petition, alleging under section 300, subdivisions (b) and (g) that mother had a history of illicit drug use, and abused methamphetamines and amphetamines, rendering her unable to provide regular care for the children; sold illicit drugs in the home; and left the children in the care of the children's maternal grandmother without making a plan for their care. The Department alleged that such conduct by mother endangered the children's physical health and safety and placed them at risk of physical harm, damage, and danger.

At the July 25, 2011, detention hearing, mother was in custody and did not appear at the hearing. The juvenile court found a prima facie case for detaining the children and that they were persons described by section 300, subdivisions (b) and (g). The juvenile court granted the Department discretion to release the children to the maternal grandmother's custody. The Department's July 25, 2011, last minute information for the court stated that S.R. and his siblings could not be placed in the care of maternal grandmother because she was not forthcoming with respect to other adults living in the residence, and her home did not meet the requirements of the Adoption and Safe Families Act.

On July 27, 2011, the juvenile court found father to be S.R.'s presumed father. The Department's August 18, 2011, interim review report stated that both mother and father were incarcerated at the Century Regional Detention Facility and the Pitchess Detention Center, respectively, and S.R. had been placed in a foster home. At the August 18, 2011, pre-release investigation and non-appearance progress hearing, father made his first appearance before the juvenile court and was provided with appointed counsel.

The Department's September 12, 2011, jurisdiction/disposition report stated that mother reported that she had been in a relationship with father since January, 2010, they were not legally married, and they did not share a residence throughout their relationship. Father was not present at S.R.'s birth.

The Department's September 12, 2011, interim review report stated that on several occasions in 2006-2008, and 2010, father had been arrested for possession of controlled substances in violation of Health and Safety Code section 11377, subdivision (a). In

2007 and 2008, father was convicted of misdemeanor possession of controlled substances. In July 2010, deportation proceedings were instituted against father, but the interim review report stated “No Disposition Available.”

The September 21, 2011, interim review report stated that on June 16, 2011, father had been arrested for burglary in violation of Penal Code section 211. On August 30, 2011, father pleaded no contest to four counts of violating Penal Code section 211, and he was sentenced to a state prison term of six years. The paternal grandmother said that father asked her to become a relative caregiver to S.R., and S.R.’s paternal grandparents advised the Department that they were willing to care for S.R.

On September 12, 2011, the Department filed a first amended petition adding an allegation to the original petition against father, under section 300, subdivision (b), stating, “[S.R.’s] father . . . has an extensive criminal history that includes arrests for convictions for possession of a controlled substance and robbery. On 8/30/11 . . . father was convicted of robbery and sentenced to state prison. Further, [father’s] criminal history and conduct endangers the child’s physical safety and emotional well-being and creates a detrimental home environment, placing the child at risk of physical and emotional harm and damage.” The Department’s September 12, 2011, jurisdiction/disposition report and September 21, 2011, interim review report stated that father and mother continued to be incarcerated at Pitchess Detention Center, and Century Regional Detention Facility, respectively.

At the September 21, 2011, adjudication hearing, mother’s counsel requested that the juvenile court order the Department to visit the paternal grandparents’ home to determine if placement for S.R. was suitable, and father’s counsel joined in the request. The juvenile court ordered the Department to visit the paternal grandparents’ home to make that determination, and continued the hearing. The Department’s October 5, 2011, last minute information for the court report stated that on October 4, 2011, the Department had completed the assessment of the paternal grandparents’ home, and they were preparing for S.R.’s arrival. A children’s social worker (CSW) was to “make arrangements with the paternal grandmother as to the placement of” S.R.

On October 5, 2011, the Department filed a second amended petition adding to the allegations in the first amended petition the identical allegation asserted against father under section 300, subdivision (b), except that it stated father's conduct also provided the juvenile court with jurisdiction under section 300, subdivision (g).

At the October 11, 2011, adjudication and disposition hearing, the juvenile court sustained two counts in the second amended petition under section 300, subdivision (b), one of which was amended, relating to mother's use and sale of illicit drugs. As amended, the first count stated, "[S.R.'s] mother . . . has a history of illicit drug abuse, and is [an] abuser of amphetamine and methamphetamine, which renders the mother periodically unable to provide regular care and supervision of [S.R.] including, at times, leaving [S.R.] with the maternal grandmother . . . for extended periods while mother's whereabouts were unknown. On 6/23/2011, . . . mother had a positive toxicology screen for amphetamine and methamphetamine. Such illicit drug use by . . . mother and neglect endangers [S.R.'s] physical health and safety and places [S.R.] at risk of physical harm, damage and danger." The second count stated, "[S.R.'s] mother . . . established a detrimental and endangering home environment for [S.R.] in that . . . mother sold illicit drugs in [S.R.'s] home. Such a detrimental and endangering home environment established for [S.R.] by . . . mother endangers [S.R.'s] physical health and safety and places [S.R.] at risk of physical harm, damage and danger." The juvenile court dismissed all other counts, including the two counts alleged against father. The juvenile court stated that, "with regards to the G count with regard to [father], I [do not] believe that there [is] a nexus in this case with regards to father's count in this case. [¶] With regards to the [second] amended petition, Department had an opportunity to amend the complaint, to add a failure to provide. There was no failure to provide claim. It looks like an exact duplicate of the allegation that was outlined in B-4. [¶] The court does not find that G-2 should be sustained on this case for lack of evidence and nexus in this case."

At the time of the adjudication hearing, S.R. was still in foster care. Mother's counsel stated that father was making an appropriate plan for S.R.'s care, which she understood was for S.R. to live with the paternal grandmother. Mother's counsel

requested that because father was a non-offending parent, the case plan be amended “to indicate that [S.R.] is home of . . . father with the understanding that . . . father is going to make an appropriate plan for [S.R.]” Father’s counsel argued that the juvenile court not suitably place S.R., and S.R. “be dismissed from the petition” The juvenile court confirmed that father had been sentenced to six years in state prison, declared S.R. a dependant of the court, and found that there would be a risk of danger to S.R.’s well-being if he were placed in father’s custody. The juvenile court ordered the Department to “continue to look into placement of [S.R.] with the . . . paternal grandmother.”

According to the Department’s October 25, 2011, last minute information for the court, on October 11, 2011, S.R. was placed in the home of the paternal grandmother, and on October 24, 2011, the Department’s Adoption and Safety Family Act/Kinship Division approved her home. S.R. appeared to have adjusted well to the home, and there were no concerns as to the child’s well-being.

DISCUSSION

A. Standing

The Department contends that father lacks standing to challenge the trial court’s jurisdictional findings and declaring S.R. a dependent child of the juvenile court based upon mother’s use and sale of illicit drugs. We disagree.

“A party has standing to seek review of a judgment or order by demonstrating that the party is legally aggrieved within the meaning of Code of Civil Procedure section 902. (*Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1201 [116 Cal.Rptr.2d 319]; *Bratcher v. Buckner* (2001) 90 Cal.App.4th 1177, 1184 [109 Cal.Rptr.2d 534].) ‘One is considered, “aggrieved” whose rights or interests are injuriously affected by the judgment. [Citations.] Appellant’s interest ““must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment.”’ [Citation.]’ (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737 [97 Cal.Rptr. 385, 488 P.2d 953]; accord, *United Investors Life Ins. Co. v. Waddell & Reed, Inc.* (2005) 125

Cal.App.4th 1300, 1304-1305 [23 Cal.Rptr.3d 387].)” (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 841-842.) “We liberally construe the issue of standing and resolve doubts in favor of the right to appeal. [Citation.]” (*In re H.G.* (2006) 146 Cal.App.4th 1, 9.)

The Department has failed to establish that father is not “aggrieved.” “Parents have a fundamental interest in the care, companionship and custody of their children. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758 [71 L.Ed.2d 599, 102 S.Ct. 1388].)” (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210.) “In section 300 proceedings, the Agency, the child, and the parent or guardian have the right to appeal. [Citation.]” (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 538; Cal. Rules of Court, rule 5.585.) The juvenile court, by finding jurisdiction and declaring S.R. a dependent child of the juvenile court, exercised control over the child, and may ultimately sever father’s parental rights in S.R. Father has standing to appeal.

B. Jurisdiction

Father contends that the juvenile court erred in sustaining the second amended petition pursuant to section 300, subdivision (b) regarding mother’s use and sale of illicit drugs. We disagree.

We review the juvenile court’s jurisdictional and dispositional findings and orders for substantial evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is credible, reasonable in nature, and of solid value. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433; *In re E.B.*, *supra*, 184 Cal.App.4th at p. 575.) We draw all reasonable inferences from the evidence to support the findings and orders and adhere to the principle that issues of fact, weight and credibility are the provinces of the juvenile court. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

Father concedes that he does not dispute that there is substantial evidence in support of the juvenile court’s jurisdiction order. Father instead contends that the

juvenile court erred in granting the petition because he was able to make an appropriate plan for S.R.'s care despite being incarcerated, citing *In re S.D.* (2002) 99 Cal.App.4th 1068 in support of his contention. That case, however, is inapposite. In *In re S.D.*, the juvenile court sustained the Department's petition based on section 300, subdivision (g), providing for dependency jurisdiction when a parent is incarcerated and unable to arrange for the child's care. Because the mother was incarcerated but had two sisters who expressed immediate willingness to take custody of the child, the appellate court concluded that the social services agency failed to prove an essential element of its jurisdictional petition, and found that juvenile court's finding of jurisdiction could not be sustained. (*In re S.D.*, *supra*, 99 Cal.App.4th at p. 1083.)

In re S.D., *supra*, 99 Cal.App.4th 1068 does not apply in this case. In the instant case, jurisdiction was sustained based on section 300, subdivision (b), regarding mother's use and sale of illicit drugs, not subdivision (g) regarding father's incarceration. The department "'is not required to prove two petitions, one against the mother and one against the father, in order for the court to properly sustain a petition . . . or adjudicate a dependency.'" (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599 [157 Cal.Rptr. 280].") (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1554.) "[W]here one basis for jurisdiction supported by substantial evidence court does not need to consider sufficiency of evidence to support other basis or constitutionality of other basis." (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72, citing *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.) The juvenile court did not err in sustaining the second amended petition.

C. Dismissal

Father contends that because he was incarcerated and yet able to make an appropriate plan for S.R.'s care, the juvenile court erred in refusing to dismiss the

dependency proceedings and declaring S.R. a dependent child of the juvenile court.³ We disagree.

Father contends that “[d]espite his incarceration, [he] could and did arrange for the care of [S.R.] with [p]aternal [g]randmother” Father argues that the Department approved the paternal grandmother’s home for the placement of S.R., and reported, based on the two weeks S.R. had been in her home, that S.R. appeared to have adjusted well to the home and there were no concerns regarding the child’s wellbeing.

Father relies on *In re Aaron S.* (1991) 228 Cal.App.3d 202, for the proposition that “where the parents are living separately and a dependency petition is based on abuse or neglect by one parent, the question whether the nonoffending parent can protect the child from the offending one is relevant to a determination whether the petition should be dismissed altogether. [Citations.]” (*Id.* at p. 211.) *In re Aaron S.* relied upon three cases—*In re V.M.* (1987) 190 Cal.App.3d 753, *In re La Shonda B.*, *supra*, 95 Cal.App.3d 593, and *In re Nicole B.* (1979) 93 Cal.App.3d 874—in which the appellate courts held that the dependency actions should not be dismissed. In *In re V.M.*, *supra*, 190 Cal.App.3d 753, the stepfather sexually abused the child, and the mother who appealed an order retaining jurisdiction was unable to have the petition dismissed because she did not seek judicial protections, and the record indicated the possibility of the family reuniting. In *In re La Shonda B.*, *supra*, 95 Cal.App.3d 593, the mother physically abused the child. On the Department’s appeal of the judgment dismissing the petition, the court reversed because the father had not shown he was capable of exercising proper and effective parental care. And in *In re Nicole B.*, *supra*, 93 Cal.App.3d 874, the child was physically abused by a man. On mother’s appeal from an order declaring the child to be a dependent child of the juvenile court, the court held that the petition was properly sustained because of the potential of the man’s return.

³ Section 360 provides in part, “After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows: [¶] (d) If the court finds that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.”

In re Jennifer P. (1985) 174 Cal.App.3d 322, also cited by *In re Aaron S.*, *supra*, 228 Cal.App.3d 202, at page 211, the mother appealed an order declaring the child a dependent of the juvenile court under section 300, subdivision (d). Mother and father were divorced, and jurisdiction was based on the juvenile court's finding that the child "had been sexually abused [by the father] that 'said minor's mother has been unable to protect said minor.'" (*Id.* at p. 325, 327.) The court reversed the juvenile court's order because it found that the mother had taken all possible steps to protect child since she learned of abuse, stating "[w]hen evidence of the molestation came to light, [the mother] immediately took steps to prevent [father] from having any contact with [the child] including pursuing [a] criminal action against her ex-husband, obtaining a temporary restraining order forbidding any contact and seeking to modify the divorce decree to give her exclusive custody over [the child]." (*Id.* at p. 327.)

"*In re Jennifer P.* . . . teaches that, although the prospect for the nonoffending parent to avoid the court supervision is not totally hopeless, he or she must go to the extraordinary length of pursuing all judicial protections available in the civil and criminal courts in order to establish his or her zeal, as well as ability, to protect the minor. Lesser measures have not been enough to reassure the Court of Appeal that the welfare of the minor can be protected without the aid of the court's juvenile dependency jurisdiction." (*In re V.M.*, *supra*, 190 Cal.App.3d at p. 757.)

Here, there is no evidence in the record that father had "pursu[ed] all judicial protections available in the civil and criminal courts" or otherwise zealously attempted to protect permanently S.R. from mother. The juvenile court's placement of S.R. in grandmother's home was only temporary, pending a resolution of the dependency proceedings, and was not intended to protect forever S.R. from mother (who was incarcerated at the time). Even assuming, *arguendo*, that placing S.R. with grandmother was for purposes of making a determination of whether that placement would permanently protect S.R. from mother, the Department's report stating that there were no concerns regarding S.R.'s well being was based upon only two weeks, an insufficient time to make such a determination.

If the juvenile court were to have dismissed the dependency proceedings, particularly at this early stage, mother would not have been required to undergo juvenile court ordered programs in an attempt to correct her behavior giving rise to the dependency proceedings, and there would be no determination as to mother's parental rights concerning S.R. Upon mother's release from custody, nothing would have prevented her from having unsupervised contact with S.R., or otherwise asserting her parental custody rights to S.R.

Father has not established that he can protect S.R. from mother by placing S.R. in the paternal grandmother's care. The juvenile court did not err by refusing to dismiss the dependency proceedings and declaring S.R. a dependent child of the juvenile court.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.